IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

:: O R D E R ::

S.B. CIVIL WRIT PETITION NO. 4312/1996

Hari Krishan Gehlot
Vs.
The State of Rajasthan and Ors.

DATE OF ORDER :: 9th AUGUST,2007

PRESENT

HON'BLE MR. BHANWAROO KHAN, J.

Mr. S.N. Trivedi, for the petitioner.
Mr. O.P. Rathi, Deputy Government Advocate.

The petitioner has filed the present writ petition with the prayer to grant him second selection grade on completion of 18 years of service from the date of his initial appointment i.e. w.e.f. July, 1967 with all consequential benefits.

In brief, facts of the case are that the petitioner was initially appointed in the Education Department w.e.f. 3.7.1956 and later on after due selection, he joined in the department of State Woolen Mills, Bikaner as Stenographer. The State Woolen Mills, Bikaner become a sick industry and he was declared surplus vide order dated 31.1.1978. He was placed at the disposal of the Collector, Bikaner and absorbed on the post of Stenographer in the office of Project Officer, World Food Programme of Indira Gandhi

Nahar Pariyojana, Bikaner vide order dated 10.2.1978. After absorption of the petitioner in the department as surplus, his seniority was to be fixed as per Rule 15 of the Rajasthan Civil Services (Absorption of Surplus Personnel) Rules, 1969 (for short 'the Rules of 1969' hereinafter). The services of the petitioner are to be controlled and regulated by proviso of the Rajasthan Subordinate Offices Ministerial Staff Service Rules, 1957 (for short 'the Rules of 1957' hereinafter). Later on, on 27.12.1980, the petitioner was substantively appointed on permanent post of Stenographer w.e.f. 1.3.1980.

It is further averred that the respondent No.2 published a tentative seniority list of Stenographer Gr.II on 2.2.1979 and thereafter, a final list of Stenographer Gr.II was also published on 1.8.1980. In both seniority list, his name did not find place. The respondent No.3 also recommended for placing the seniority of the petitioner in the list at proper place, but as a result of not incorporating the name of petitioner in the seniority list and by not providing his seniority at proper place as per length of service rendered by him, the petitioner could not be provided the benefit of selection grade on completion of 9, 18 years of services in the light of circular vide Order No. F.20(1)FD/Gr.II/92 dated 25.1.1992 issued by the Finance Department, Government of Rajasthan, Jaipur. The circular well speaks of

computation of period of service from the date of his appointment in the existing cadre.

Further, on 7.10.95, a clarification was also made by the Finance Department stating inter alia that employee, who has been declared surplus and absorbed against a new post, his services of 9, 18 and 27 years shall be deemed to have been completed on the date on which his immediate senior employee completes that period of service. Despite regular and satisfactory services, he has not been given selection grade of 18 years of service. Hence, the present writ petition.

A reply to the writ petition has been filed on behalf of the respondents. It is admitted in the reply that the petitioner was absorbed in the department, but contended that since he has not passed the examination held by the Rajasthan Public Service Commission, hence, his name was not included in the seniority list. Since he was absorbed in the department on 28.12.78, his period for completion of 9 years of service would be counted from the date of his joining i.e. 28.12.78. There is no illegality in not giving selection grade after completion of 18 years of service as in the department, he has not completed that period and prayer for rejection of writ petition was made.

Heard learned counsel for the parties.

The only short question involved in the writ petition is from which date the period of service rendered by the petitioner for giving him selection scale of 9, 18 years of service should be counted.

Learned counsel pleaded that the period should have been counted by the respondents from the initial date of appointment in the department, in which he was absorbed, which is according to him July, 1967 as he was initially appointed in State Woollen Mills, Bikaner after due selection. But learned counsel for the respondents pleaded that he was absorbed after State Woollen Mills, Bikaner was declared as a Sick Industry and he joined the services in the department on 31.1.78, so in the department his services should have been counted from 31.1.78 and not from July, 1967 when he joined in the State Woollen Mills, Bikaner.

Learned counsel for the petitioner has relied upon the judgment of Full Bench of this Court in State of Rajasthan & Ors. Vs. Farooq Ahmed & Anr., reported in RLW 2005(1) 565 in which it has been specifically mentioned that where a person is appointed on adhoc / temporary basis in accordance with the Rules and in time scale, the period of ad hoc /temporary services rendered by him, before his regularisation, should be counted for the purpose of grant of

selection grade on completion of 9, 18 and 27 years of service, as the case may be. Since the petitioner joined in State Woollen Mills, Bikaner after due selection on the post of Stenographer and later on, when the State Woollen Mills became a sick industry he was absorbed in the department of World Food Programme of Indira Gandhi Nahar Pariyojana, Bikaner as a Stenographer Gr.II, so his initial appointment is from the date when he joined the services in State Woollen Mills, Bikaner. As per cited judgment even adhoc / temporary period, if the selection is by due process, is counted for granting selection scale of 9, 18 and 27 years of service. The only conclusion which can be arrived at is that from the date of his initial appointment i.e. July, 1967 the period of 9, 18 and 27 years should have been counted from his initial appointment and not from when he joined after being declared surplus from State Woollen Mills and joined in the department of World Food Programme of Indira Gandhi Nahar Pariyojana, Bikaner.

In the result the writ petition succeeds and is allowed. The petitioner is held entitled for counting the period of service rendered by him from the date of his initial appointment i.e. July, 1967. The respondents are directed to count the period of service rendered by him from the date of his initial appointment i.e. July, 1967 for granting of selection grade and they are further directed to refix the pay-

scale of the petitioner and to pay all consequential benefits after granting second selection grade on completion of 18 years of service. There shall be no order as to costs.

(BHANWAROO KHAN)J.

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